

**MEMORANDUM OF AGREEMENT (MOA)**  
**BETWEEN**  
**THE DEPARTMENT OF DEFENSE**  
**OF THE UNITED STATES OF AMERICA**  
**AND**  
**THE MINISTRY OF DEFENCE**  
**OF THE REPUBLIC OF INDIA**  
**FOR**  
**RESEARCH, DEVELOPMENT, TESTING, AND EVALUATION**  
**PROJECTS**

(Short Title: U.S. DoD-IN MoD RDT&E MOA).

**THIS DOCUMENT IS CERTIFIED TO BE A TRUE COPY**  
**CERTIFIED BY: FRANK KENLON, GS-15**

*F. D. Kenlon* 1/27/06

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## PREAMBLE

The Department of Defense of the United States of America (U.S. DoD) and the Ministry of Defence of the Republic of India (IN MOD), hereinafter referred to as the "Parties":

Having a common interest in defense;

Recognizing the benefits to be obtained from standardization, rationalization, and interoperability of military equipment;

Seeking to make the best use of their respective research and technology development capacities, eliminate unnecessary duplication of work, encourage interoperability, and obtain the most efficient and cost effective results through cooperation in Research, Development, Test, and Evaluation Projects; and

Desiring to improve their respective conventional defense capabilities through the application of emerging technology;

Have agreed as follows:

## ARTICLE I

### DEFINITIONS

For the purposes of this Agreement and any of its specific Project Agreements (PAs), the following definitions shall apply:

Classified Information	Official information that requires protection in the interests of national security and is so designated by the application of a security classification marking. It may be in oral, visual, magnetic, or documentary form, or in the form of equipment or technology.
Contract	Any mutually binding legal relationship under national law that obligates a Contractor to furnish supplies or services, and obligates one or both of the Parties to pay for them.
Contracting	The obtaining of supplies or services by Contract from sources outside the government organizations of the Parties. Contracting includes description (but not determination) of supplies and services required, solicitation and selection of sources, preparation and award of Contracts, and all phases of Contract administration.
Contracting Agency	The entity within the government organization of a Party that has authority to enter into, administer, and/or terminate Contracts.
Contracting Officer	A person representing a Contracting Agency of a Party who has the authority to enter into, administer, and/or terminate Contracts.
Contractor	Any entity awarded a Contract by a Party's Contracting Agency.
Contractor Support Personnel	Persons specifically identified in support contracts who provide administrative, managerial, scientific, or technical support services to a Party under a Contract with that Party that prohibits using information received under the contract for any other purpose other than those identified in this Agreement or a related PA.

Controlled Unclassified Information	Unclassified information to which access or distribution limitations have been applied in accordance with applicable national laws or regulations. Whether the information is provided or generated under this Agreement, the information shall be marked to identify its "in confidence" nature. U.S. export controlled technical data shall be marked as "International Traffic in Arms Regulations (ITAR)-Controlled". Indian export controlled technical data shall be marked as RESTRICTED GOI Information. It could include information that has been declassified, but remains controlled.
Cooperative Project Personnel (CPP)	Military members or civilian employees of a Party assigned to the joint program office or the other Party's facilities who perform managerial, engineering, technical, administrative, Contracting, logistics, financial, planning, or other functions in furtherance of a PA.
Defense Purposes	Manufacture or other use in any part of the world by or for the armed forces of any Party.
Designated Security Authority (DSA)	The security office approved by national authorities to be responsible for the security aspects of this Agreement.
Financial Costs	PA costs met with monetary contributions.
Non-Financial Costs	PA costs met with non-monetary contributions.
Party	A signatory to this Agreement represented by its military and civilian personnel. Contractors and Contractor Support Personnel will not be representatives of a Party under this Agreement.
Patent	Legal protection of the right to exclude others from making, using, or selling an invention. The term refers to any and all patents including, but not limited to, patents of implementation, improvement, or addition, petty patents, utility models, appearance design Patents, registered designs, and inventor certificates or like statutory protections as well as divisions, reissues, continuations, renewals, and extensions of any of these.
Project Agreement (PA)	An implementing agreement, added after this Agreement has entered into force, that specifically details the terms of collaboration on a specific project.
Project Equipment	Any material, equipment, end item, subsystem, component, special tooling or test equipment jointly acquired or provided for use in the performance of a Project.

Project Background Information	Information not generated in the performance of a specific PA.
Project Foreground Information	Information generated in the performance of a specific PA.
Project Information	Any information provided to, generated in, or used in the performance of a PA regardless of form or type, including, but not limited to, that of a scientific, technical, business, or financial nature, and also including photographs, reports, manuals, threat data, experimental data, test data, designs, specifications, processes, techniques, inventions, drawings, technical writings, sound recordings, pictorial representations, and other graphical presentations, whether in magnetic tape, computer memory, or any other form and whether or not subject to copyright, Patent, or other legal protection.
Project Invention	Any invention or discovery formulated or made (conceived or first actually reduced to practice) in the course of work performed under a PA. The term "first actually reduced to practice" means the first demonstration sufficient to establish to one skilled in the art to which the invention pertains, of the operability of an invention for its intended purpose and in its intended environment.
Third Party	A government other than the government of a Party and any person or other entity whose government is not the government of a Party.

## ARTICLE II

### OBJECTIVES

2.1. The objective of this Agreement is to define and establish the general terms and conditions that shall apply to the initiation, conduct, and management of projects detailed in separate PAs between representatives authorized in accordance with national procedures of the Parties. These PAs shall be entered into pursuant to this Agreement and shall incorporate by reference the terms of this Agreement.

2.2. Detailed terms and conditions of each individual PA shall be consistent with this Agreement. Each PA shall include specific provisions concerning the objectives, scope of work, sharing of work, management structure, financial arrangements and classification for the applicable PA consistent with the model set forth in Annex A.



## ARTICLE III

### SCOPE OF WORK

3.1. The scope of work for this Agreement shall encompass collaboration in research, development, testing, and evaluation potentially leading to new or improved military capability. PAs may encompass one or more of the following activities: basic research, applied research, advanced technology development, concept of operation studies and analyses, advanced concept technology demonstrations, system prototypes, system development and demonstration (engineering and manufacturing development), developmental test and evaluation of system subsystem efforts, and evolutionary acquisition/spiral development efforts associated with low rate initial production or production programs.

3.2. Information exchanges specifically and only for the purpose of harmonizing the Parties' requirements for formulating, developing, and negotiating PAs are permitted under this Agreement. If information is exchanged but no PA is signed, or before a PA is signed, the receiving Party shall use such exchanged information only for information and evaluation purposes and shall not disclose or transfer such exchanged information to a Third Party.

3.3. This Agreement does not preclude entering into any other agreement in the area of research and development.

## ARTICLE IV

### MANAGEMENT (ORGANIZATION AND RESPONSIBILITY)

4.1. The Director for International Cooperation, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics) (or his successor in the event of reorganization) is designated U.S. Agreement Director (U.S. AD). The Chief Controller of Research & Development (TMS), Defence Research and Development Organisation (or his/her successor in the event of reorganization) is designated the India Agreement Director (IN AD). The ADs shall be responsible for:

- 4.1.1. monitoring implementation of this Agreement and exercising executive-level oversight;
- 4.1.2. monitoring the overall use and effectiveness of the Agreement;
- 4.1.3. recommending amendments to this Agreement to the Parties; and
- 4.1.4. resolving issues brought forth by the Management Agents.

4.2. The appropriate U.S. Military Department Acquisition Executive or Defense Agency Director, or his/her designee, is designated U.S. Management Agent (U.S. MA) for those projects within his/her respective Military Department or Defense Agency. The Director, International Cooperation, Defence Research and Development Organisation Headquarters, Ministry of Defence, or his/her designee, is designated India Management Agent (IN MA). The MAs shall be responsible for:

- 4.2.1. entering into PAs in accordance with this Agreement and national policies and procedures;
- 4.2.2. establishing a management structure for each PA considering its scope and the requirement for a Steering Committee (SC);
- 4.2.3. appointing Project Officers (POs) when deemed necessary, and, as appropriate, SC members;
- 4.2.4. giving administrative direction to appropriate SCs, if established, or POs appointed to their projects;
- 4.2.5. designating a point of contact for exchange of information to harmonize requirements for the development and negotiation of potential PAs, in accordance with paragraph 3.2 of Article III (Scope of Work); and
- 4.2.6. resolving issues brought forth by the SC or, if no SC is established, by the POs.

4.3. If a SC is established under a particular PA, it shall be responsible for:

- 4.3.1. providing policy and management direction to the POs during PA execution;
- 4.3.2. monitoring overall implementation, including technical, cost, and schedule performance against requirements;
- 4.3.3. approving plans for transfers of Project Equipment or disposal of jointly acquired Project Equipment, in accordance with Article VII;
- 4.3.4. resolving issues brought forth by the POs;
- 4.3.5. maintaining oversight of the security aspects of a project;
- 4.3.6. approving assignment of personnel working on a project at the other Party's facilities in accordance with the provisions set out in Appendix (I) to Annex A;
- 4.3.7. appointing a project security officer;
- 4.3.8. establishing the detailed financial procedures of a PA in the event that one Party contracts on behalf of the other Party or on behalf of both Parties; and
- 4.3.9. reporting status and activity of assigned PAs on an annual basis to the MAs and ADs.

4.4. In accordance with the terms of the PA, the POs shall have primary responsibility for effective implementation and efficient management and direction of their assigned PA including technical, cost, and schedule performance against requirements. Additionally, the POs shall have the responsibilities under paragraph 4.3. if no SC is established for their PA, except that the MAs shall be responsible for resolving issues brought forth by the POs. The POs shall also maintain a list of all Project Equipment transferred by either of the Parties.

4.5. The Parties may place CPPs in a joint project office (JPO) or in the facilities of the other Party. Terms and conditions for CPPs are set out in Annex B (Cooperative Project Personnel).

4.6. The MAs, SCs and POs will meet as required, alternately in the United States and India. The Chairman for each meeting shall be the senior official of the host Party. During such meetings, all decisions will be made unanimously with each Party having one vote. In the event that the Parties are unable to reach a timely decision on an issue, each Party shall refer the issue to its higher authority for resolution. Approved PAs shall continue to be implemented without interruption under the direction of the POs while an issue is being resolved by higher authority.

## ARTICLE V

### FINANCIAL PROVISIONS

5.1. Each Party shall contribute its equitable share of the full Financial and Non-financial Costs of each PA, including overhead costs, administrative costs and cost of claims, and shall receive an equitable share of the results of each PA.

5.2. The financial and non-financial arrangements for a PA, including the total cost of the PA and each Party's share of the total cost, shall be included in the PA.

5.3. For each PA, the POs will be responsible for establishing the detailed financial management procedures under which the project will operate. Where necessary, these procedures will be detailed in a financial management procedures document (FMPD) proposed by the POs and subject to the approval of the SC, if one is established.

5.4. Both Parties shall perform, or have performed, their tasks and shall use their best efforts to perform the tasks within the cost estimates specified in each PA. Both Parties shall bear the full costs they incur for performing, managing, and administering their own activities under this Agreement and participation in each PA, including their share of the costs of any Contracts under paragraph 5.10.

5.5. The following costs shall be borne entirely by the Party incurring the costs or on whose behalf the costs are incurred:

5.5.1. costs associated with any unique national requirements identified by a Party; and

5.5.2. any other costs not expressly stated as shared costs or any other costs outside the scope of this Agreement and its PAs.

5.6. For PAs with shared costs that involve the establishment of a JPO with CPP assignments to the other Party's facilities or the JPO, the PA shall address the financial and non-financial contributions required for JPO administration and associated support services including, but not limited to, JPO costs of travel incurred in support of project efforts, JPO training costs, Contract award, Contract administration, office space, security services, information technology services, communications services, and supplies.

5.7. In addition to the shared costs of JPO administration and associated support services costs described in paragraph 5.6. the cost of CPP in the JPO or assigned to the other Party's facilities shall be borne as follows:

5.7.1. The host Party shall bear the costs of all pay and allowances of Host Party personnel in the JPO.

5.7.2. The parent Party shall bear the following CPP-related costs:

- 5.7.2.1. All pay and allowances (including accommodations and expenses).
- 5.7.2.2. Transportation of the CPP, the CPP's dependents, and their personal property to the place of assignment in the host Party's nation for the CPP's commencement of a tour of duty in the JPO or field activity, and return transportation of the foregoing from the place of assignment in the host Party's nation upon completion or termination of the tour of duty.
- 5.7.2.3. Compensation for loss of, or damage to, the personal property of CPP or the CPP's dependents, subject to the parent Party's laws and regulations.
- 5.7.2.4. Preparation and shipment of remains and funeral expenses in the event of the death of the CPP or the CPP's dependents.

5.8. For PAs without shared costs that involve the assignment of one Party's CPP to the facilities of the other Party, the Parties shall bear the costs as set forth in paragraph 5.7. except that the host Party shall also bear the assignment-related administrative and support costs such as office space, security services, information technology services, communications services, and supplies. The parent Party will bear the cost of CPP travel incurred in support of a PA and CPP-related training.

5.9. A Party shall promptly notify the other Party if available funds will not be adequate to fulfill its obligations as agreed under a PA, or if it appears that the cost estimates in a PA will be exceeded, and both Parties shall immediately consult with a view toward continuation on a modified basis.

5.10. If one Party contracts on behalf of the other Party or on behalf of both Parties, each Party shall make funds available in the amounts and at the times set forth in the estimated schedule for monetary contributions, as specified in the FMPD.

5.11. The Parties recognize that it may become necessary for one Party to incur contractual or other obligations for the benefit of the other Party prior to receipt of the other Party's funds. In the event that one Party incurs such obligations, the other Party shall make such funds available in such amounts and at such times as may be required by the Contract or other obligation, and shall pay any damages and costs that may accrue from the performance or cancellation of the Contract or other obligation in advance of the time such payments, damages, or costs are due.

5.12. Each Party shall be responsible for the audit of its activities or its Contractors' activities pursuant to a PA. A Party's audits will be in accordance with its own national practices and the FMPD. For PA efforts where funds are transferred between the Parties, the receiving Party shall be responsible for the internal audit regarding administration of the other Party's funds in accordance with the receiving Party's national practices. The receiving Party shall promptly make audit reports of such funds available to the other Party.

## ARTICLE VI

### CONTRACTUAL PROVISIONS

6.1. If either Party determines that Contracting is necessary to fulfill its obligations under the scope of work of a PA, that Party shall contract in accordance with its respective national laws, regulations and procedures.

6.2. When one Party individually contracts to carry out a task under a PA, it shall be solely responsible for its own contracting, and the other Party shall not be subject to any liability arising from such Contracts without its written consent.

6.3. The Parties may also determine that one Party's Contracting Agency should enter into a Contract to fulfill their joint PA obligations or the PA obligations of the non-contracting Party. That Contracting Agency shall contract for both Parties in accordance with its national laws, regulations, and procedures. If necessary to meet the requirements of a PA, the U.S. DoD's Contracting Officer or the IN MOD Contracting Agency shall seek deviations from national regulations and procedures wherever possible. Sources from both Parties' industries shall be allowed to compete on an equal basis for Contracts. The U.S. DoD Contracting Officer or the IN MOD Contracting Agency shall be the exclusive source for providing contractual direction and instructions to Contractors for Contracts awarded by that Party.

6.4. For all Contracting activities performed by either Party, the POs shall, upon request, be provided a copy of all statements of work prior to the development of solicitations to ensure that they are consistent with the provisions of this Agreement and the applicable PA.

6.5. For all Contracting activities performed by either Party, each Party's Contracting Agency shall negotiate to obtain the rights to use and disclose Project Information required by Article VIII (Disclosure and Use of Project Information). Each Party's Contracting Agency shall insert into its prospective Contracts (and require its Contractors to insert in subcontracts) suitable provisions to satisfy the requirements of this Agreement, including Article VIII (Disclosure and Use of Project Information), Article IX (Controlled Unclassified Information), Article XI (Security), Article XII (Third Party Sales and Transfers), and Article XVII (Amendment, Termination, Entry into Force, and Duration), and suitable provisions to ensure compliance with the Parties' respective export control laws and export control implementing regulations. During the Contracting process, each Party's Contracting Officer shall advise prospective Contractors of their obligation to notify the Contracting Agency immediately if they are subject to any license or agreement that will restrict that Party's freedom to disclose Project Information or permit its use. The Contracting Officer shall also advise prospective Contractors to employ their best efforts not to enter into any new agreement or arrangement that will result in such restrictions.

6.6. The transfer of export-controlled information furnished by one Party shall be authorized by the Government of the furnishing Party only to those Contractors of the other Party who shall limit the end use of the Information received for the sole purpose of furthering the purposes authorized

under this Agreement. The Parties shall establish legal arrangements with their Contractors to ensure that their Contractors do not retransfer or otherwise use export-controlled information for any purpose other than authorized under this Agreement. Such legal arrangements shall also provide that the Contractor shall not retransfer the export-controlled information to another Contractor without the consent of the Government of the furnishing Party.

6.7. In the event a Party's Contracting Agency is unable to secure adequate rights to use and disclose Project Information as required by Article VIII (Disclosure and Use of Project Information), or is notified by Contractors or prospective Contractors of any restrictions on the disclosure and use of Project Information, that Party's PO shall notify the other Party's PO of the restriction(s).

6.8. Each Party's PO shall promptly advise the other Party's PO of any cost growth, schedule delay, or performance problems of any Contractor for which its Contracting Agency is responsible.

6.9. No requirement shall be imposed by either Party for workshare or other industrial or commercial compensation in connection with this Agreement that is not in accordance with this Agreement or its PAs.

## ARTICLE VII

### PROJECT EQUIPMENT

7.1. Each Party may provide Project Equipment identified as being necessary for executing a specific PA to the other Party. Such Project Equipment shall remain the property of the providing Party. A list of all Project Equipment provided by one Party to another Party shall be developed, maintained, approved, and amended by the POs and shall be included in an Appendix to each PA (see Annex C to this Agreement).

7.2. The receiving Party shall maintain any such Project Equipment in good order, repair, and operable condition. Unless the providing Party has authorized the Project Equipment to be expended or otherwise consumed without reimbursement to the providing Party, the receiving Party shall return the Project Equipment to the providing Party in as good condition as received, normal wear and tear excepted, or return the Project Equipment and pay the cost to restore it. If the Project Equipment is damaged beyond economical repair, the receiving Party shall return the Project Equipment to the providing Party (unless otherwise specified in writing by the providing Party) and pay its replacement value as computed pursuant to the providing Party's national laws and regulations. If the Project Equipment is lost while in the custody of the receiving Party, the receiving Party shall issue a certificate of loss to the providing Party and pay the replacement value as computed pursuant to the providing Party's national laws and regulations. If known at the time of entry into force, the replacement value of the Project Equipment shall be specified in the PA.

7.3. All Project Equipment that is transferred shall be used by the receiving Party only for the purposes of carrying out the activities under a PA. In addition, in accordance with Article XII (Third Party Sales and Transfers), Project Equipment shall not be re-transferred to a Third Party without the prior written consent of the providing Party.

7.4. The providing Party shall deliver Project Equipment to the receiving Party at a mutually agreed location. Possession of the Project Equipment shall pass from the providing Party to the receiving Party at the time of receipt of the Project Equipment. Any further transportation is the responsibility of the receiving Party.

7.5. Project Equipment transferred to one Party under a PA shall be returned to the providing Party prior to the termination or expiration of that PA.

7.6. Any Project Equipment that is jointly acquired on behalf of both Parties for use under a PA shall be disposed of during the PA or when the PA ceases, as agreed or directed by the Steering Committee or, if no Steering Committee is established, the POs.

7.7. Disposal of jointly acquired Project Equipment may include a transfer of the interest of one Party in the Project Equipment to the other Party, or the sale of such Equipment to a Third Party in accordance with Article XII (Third Party Sales and Transfers). The Parties shall share the



consideration from jointly acquired Project Equipment transferred or sold to a Third Party in the same ratio as costs are shared under the applicable PA in a manner they determine to be fair at the time.